

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON VARIOUS DISCOVERY AND PRETRIAL MOTIONS**

This ruling addresses a number of discovery motions and one motion related to trial witnesses.

ORA Motion to Compel Further Data Request Responses from Pacific Bell

I heard the motions of The Utility Reform Network (TURN) and the Commission's Office of Ratepayer Advocates (ORA) to compel further discovery responses from Pacific Bell (Pacific) by conference call on May 21-23, 2002 and made the following rulings:

Data requests and required action in order discussed:

Data Request

- 15.1 full and complete response due in ORA's hands¹ by 5/24/02
- 15.2 same as 15-1
- 15.4 full and complete response due in ORA's hands by 5/21/02
- 15-6 same as 15-4
- 19-11 same as 15-1
- 19-9 same as 15-1
- 19-10 same as 15-1
- 15-31 full and complete response due in ORA's hands by Sunday, 5/26/02 at noon
- 19-31 same as 15-31
- 15-33 same as 15-1
- 15-8 full and complete response due in ORA's hands 7/1/02. Parties to solve definitional confusion. Bring to Law and Motion Judge Sarah R. Thomas after Phase 2A hearing if unable to solve
- 15-13 full and complete response due in ORA's hands 7/1/02
- 15-14 same as 15-13
- 15-15 Pacific Bell to report to ORA on results of its reasonable and diligent search by 6/7/02, and provide responsive information to ORA 6/14/02. Bring to Judge Thomas week of 6/10/02 if dispute
- 15-16 same as 15-15
- 15-17 same as 15-15
- 15-18 same as 15-15

¹ The requirement that a response be in the propounding party's hands by a particular date means that the response shall be e-mailed, faxed or hand-delivered, at the recipient's option, on or before the due date.

- 15-22 Pacific agreed voluntarily - full and complete response due in ORA's hands 5/24/02
- 15-9 full and complete response due in ORA's hands by 5/31
- 15-10 Pacific responded 3/28/02; will furnish ORA another copy
- 15-11 same as 15-10
- 19-1 same as 15-1
- 19-2 same as 15-1
- 19-3 same as 15-1
- 19-4 same as 15-1
- 19-5 Pacific voluntarily promised a full and complete response in ORA's hands by 6/7/02
- 19-7 same as 19-5
- 19-8 Pacific voluntarily promised a full and complete response in ORA's hands by 5/31/02
- 19-12 Pacific voluntarily promised a full and complete response in ORA's hands by 5/24/02
- 19-20 same as 19-8
- 19-19a same as 19-8
- 19-6 Pacific voluntarily promised a full and complete response in ORA's hands by 6/14/02

TURN Motion to Compel Further Data Request Responses from Pacific Bell

TURN and Pacific resolved all items in motion except those reflected below:

Data Request

- 14 Pacific not required to review individual contracts, but shall conduct reasonable and diligent search for high level/summary memos/reports, report to TURN on the results of its search by 6/14/02, and produce such information so that it is in TURN's hands by 7/1/02.

- 24 full and complete response due in TURN's hands 7/1/02 re second and third years in future (Pacific agreed voluntarily re first year in future)
- 25 full and complete response due in TURN's hands 7/1/02
- 36 limit to records of SBC Pacific and SBC Corporate/Texas only. Response due in TURN's hands 7/1/02.
- 39 full and complete response due in TURN's hands 5/31/02
- 40 same as 39
- 41 limit to high level reports/memos and team summaries; results due in TURN's hands 5/31/02
- 42 limit to ASI California and ASI national headquarters, and executives at VP level and above; results due in TURN's hands 5/31/02
- 43 no response required; relevance objection sustained
- 44 same as 43
- 46 limit to ASI California and ASI national headquarters; results due in TURN's hands 7/1/02

Pacific Bell's Motion to Compel Depositions of Telecommunications Division Staff and Consultants

On May 24, 2002, I heard extensive argument on Pacific's motion to compel depositions of a representative of the Commission's Telecommunications Division (TD) and of three members of the Overland Consulting (Overland) staff. The motion is denied on the following grounds:

Depositions of Overland Consulting's Mr. Welchlin and Mr. Harpster

1. Pacific failed to show that data requests were an inadequate means of obtaining discovery. TD asserted that it had furnished responses to other data requests covering the same material, and Pacific failed to refute this argument. Indeed, Pacific stated it had "no criticism" of TD's data request responses.

2. Pacific failed to show it exercised reasonable diligence in attempting to take the depositions after the February 20, 2002 release of the Overland audit. Pacific was aware of Mr. Welchlin's and Mr. Harpster's involvement in the audit at that time. While Pacific asserted it attempted to take these depositions early on, TD refuted its claim.
3. Pacific failed to state with particularity the information to be obtained through deposition. It only identified the areas of inquiry, not the responses it sought to obtain. *See* Judge Kenney's May 14, 2002 ruling.

Depositions of Telecommunications Division's Mr. Christiansen and Overland's Mr. Lubow

1. See items 1 and 3 above, which are incorporated herein by reference.
2. Pacific failed to show the relevance of the witnesses' testimony or the likelihood that the depositions would lead to the discovery of admissible evidence.
3. Pacific failed to establish a right to take the depositions of the Commission - *i.e.*, its staff and/or consultant - simply by virtue of the pendency of a Commission proceeding. The Commission is simply acting as a regulator in this proceeding, and it is not clear that a regulator opens itself up to depositions of non-testimonial witnesses simply by doing its job.

Pacific Bell's Motion to Take Depositions of Pacific's ORA Witnesses

I also heard extensive argument regarding Pacific's motion to take the depositions of ORA witnesses. I granted the motion, subject to the conditions in Judge Kenney's May 14, 2002 ruling, and to a 90-minute time limitation on each deposition. I ordered the parties to coordinate scheduling of the depositions, and to bring any disagreements to my attention. I agreed after argument to accept any submissions ORA wished to make related to its prior data request responses, but to date have not received any such material. I am issuing this ruling now to give certainty to the parties. If ORA submits information related to its data

request responses, I will consider whether to revise this ruling to reflect the new information at that time.

1. Pacific showed reasonable diligence in attempting to take the ORA witnesses' depositions prior to May 2002.
2. Pacific demonstrated that data requests were not an adequate substitute for depositions. Indeed, its May 2002 data requests on the subjects it would pursue in deposition received a response from ORA stating that ORA would not respond until September 11, 2002. This was an unreasonable response. Moreover, when I asked ORA's counsel directly whether ORA would have responded to data requests covering the same ground as that noticed in the request for depositions, counsel never stated ORA would have responded. This fact bolstered my conclusion that in the case of these ORA witnesses, data requests were not an adequate substitute for depositions.
3. Pacific showed that the testimony was relevant or likely to lead to the discovery of admissible evidence.
4. Pacific failed to state with particularity the information to be obtained through deposition. It only identified the areas of inquiry, not the responses it sought to obtain. *See* Judge Kenney's May 14, 2002 ruling. However, in view of Pacific's showing in favor of depositions, I ordered brief depositions, subject to the requirement that Pacific identify with particularity, by close of business Friday, May 24, 2002, the information to be obtained through deposition.

Pacific Bell's Notice to Appear – Telecommunications Division

On May 30, 2002, I heard argument on Pacific's motion seeking to compel Mr. Christensen and Mr. Lubow to appear as witnesses in the hearings that commenced on May 29, 2002. I denied the motions for the following reasons:

Mr. Christiansen

1. Pacific failed to establish a right to compel the testimony of the Commission - i.e., its staff and/or consultant - simply by virtue of the pendency of a Commission proceeding. The Commission is simply acting as a regulator in this proceeding, and it is not clear

that a regulator opens itself up to being called to testify simply by doing its job.

2. Pacific's representation that Mr. Christiansen's testimony was relevant lacked foundation. Pacific alleged Mr. Christiansen instructed an Overland staff person not to show Pacific preliminary drafts of the Overland audit. Pacific alleged, for the first time at oral argument for purposes of this motion, that such conduct violated a "NARUC standard." However, Pacific failed to produce the NARUC standard, which is necessary foundation for Pacific's claim.
3. The information contained in Pacific's written motion did not establish that Mr. Christiansen had relevant evidence.

Mr. Lubow

1. See item 1 above, which is incorporated herein by reference.
2. Pacific's new evidence, not contained in its motion, concerned conduct of Mr. Lubow in other states and other proceedings related to non-telecommunications issues. While Judge Kenney, the ALJ assigned to the overall proceeding, admitted portions of such evidence, I determined that such evidence was too remote in time and subject matter, and too ambiguous, to be admissible to challenge Mr. Lubow's credibility. I thus denied the motion to compel Mr. Lubow to appear as a witness at hearing. In view of Judge Kenney's ruling admitting certain such evidence, the denial was without prejudice to renewal of the motion before Judge Kenney.
3. The information contained in Pacific's written motion did not establish that Mr. Lubow had relevant evidence.

IT IS RULED that:

1. Office of Ratepayer Advocates' (ORA) Motion to compel further data request responses from Pacific Bell (Pacific) is granted as set forth herein.
2. The Utility Reform Network's motion to compel further data request responses from Pacific is granted as set forth herein.

3. Pacific's motion to compel depositions of the Telecommunications Division's staff and consultants is denied as set forth herein.

4. Pacific's motion to compel depositions of ORA's witnesses is granted as set forth herein.

5. Pacific's motion to call Mr. Christiansen and Mr. Lubow as witnesses at hearing is denied without prejudice.

Dated June 10, 2002, at San Francisco, California.

/s/ SARAH THOMAS

Sarah Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Various Discovery and Pretrial Motions on all parties of record in this proceeding or their attorneys of record.

Dated June 10, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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